



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XA467]

Endangered and Threatened Species; Draft Recovery Plan and Draft Recovery Implementation Strategy for the Main Hawaiian Islands Insular False Killer Whale Distinct Population Segment and Notice of Initiation of 5-Year Review

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of availability of draft recovery plan and draft recovery implementation strategy; request for comments; notice of initiation of a 5-year review; request for information.

SUMMARY: We, the National Marine Fisheries Service (NMFS), announce the availability of the Draft Recovery Plan and Draft Recovery Implementation Strategy for the Main Hawaiian Islands Insular False Killer Whale (MHI IFKW; *Pseudorca crassidens*) Distinct Population Segment (DPS) for public review. We are soliciting review and comment from the public and all interested parties on the Draft Recovery Plan and Draft Recovery Implementation Strategy, and will consider all substantive comments received during the review period before submitting the Recovery Plan and Recovery Implementation Strategy for final approval. We are also initiating a 5-year review of the MHI IFKW and are requesting new information on its status.

DATES: Comments on the Draft Recovery Plan and Draft Recovery Implementation Strategy must be received by [*insert date 60 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: You may submit comments on the Draft Recovery Plan, the Draft Recovery Implementation Strategy, and information for the 5-year review, identified by NOAA–NMFS–2020–124 by either of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal.
 1. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2020-124*.
 2. Click the “Comment Now!” icon and complete the required fields, and
 3. Enter or attach your comments.
- *Mail:* Submit written comments or information for the 5-year review to Ann Garrett, Assistant Regional Administrator, Protected Resources Division, NMFS, Pacific Islands Regional Office, Attn: Krista Graham, 1845 Wasp Blvd., Building 176, Honolulu, HI 96818.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

The Draft Recovery Plan and Draft Recovery Implementation Strategy are available online at www.regulations.gov/#/docketDetail;D=NOAA-NMFS-2020-124 or from <https://www.fisheries.noaa.gov/species/false-killer-whale#conservation-management> or upon request from the NMFS Pacific Islands Regional Office, Protected Resources Division.

FOR FURTHER INFORMATION CONTACT: Krista Graham, (808) 725-5152, krista.graham@noaa.gov; Kristen Koyama, (301) 427-8403, kristen.koyama@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act (ESA) of 1973, as amended (15 U.S.C. 1531 *et seq.*), requires that NMFS develop and implement recovery plans for the conservation and survival of threatened and endangered species under its jurisdiction, unless it is determined that such plans would not promote the conservation of the species. Section 4(f)(1) of the ESA requires that recovery plans incorporate: (1) objective, measurable criteria which, when met, would result in a determination that the species is no longer threatened or endangered; (2) site-specific management actions necessary to achieve the plan's goals; and (3) estimates of the time required and costs to implement recovery actions.

The MHI IFKW was listed as an endangered DPS on November 28, 2012, under the ESA (77 FR 70915). The listing determination and the extinction risk assessment were informed by the best available scientific and commercial data, as well as the status review conducted by a Biological Review Team (Oleson *et al.* 2010). The final critical

habitat rule for the MHI IFKW DPS was published in the **Federal Register** on July 24, 2018 (83 FR 35062).

Although three populations of false killer whales occur within the Hawaiian Archipelago, the MHI IFKW DPS is a unique island-associated population with a range that entirely surrounds the main Hawaiian Islands. The most recent abundance estimate from 2015 was 167 (SE=23; 95 percent CI=128–218) animals, with annual estimates over a 16-year survey period ranging from 144 to 187 animals (Bradford *et al.* 2018). This estimate is similar to multi-year aggregated estimates previously reported (Oleson *et al.* 2010). Several lines of evidence indicate that the MHI IFKW has likely declined until at least the early 2000s. Because of changes in survey design and effort, it is unknown whether the MHI IFKW has continued to decline, has recently stabilized, or has recently increased.

Development of the Draft Plan

In September 2016, we developed a recovery outline to systematically and cohesively guide recovery actions for the MHI IFKW until we completed a recovery plan. The recovery outline is available from our website at:

<https://www.fisheries.noaa.gov/species/false-killer-whale#conservation-management>.

In October 2016, we held a four-day recovery planning workshop for the MHI IFKW. The purpose of the workshop was to review and update the original threats analysis from the 2010 status review report (Oleson *et al.* 2010) and the 2012 final listing rule (77 FR 70915), as well as identify potential recovery criteria and actions to address the threats to the species. We invited experts in specific topic areas, including the species' biology/ecology, threats to the species and the species' habitat, and the recovery planning

process itself. Identified experts included representatives of federal and state agencies, scientific experts, individuals from conservation partners and non-governmental organizations, and commercial and recreational fishermen. The workshop summary was published in February 2017 and is available from our website at:

<https://www.fisheries.noaa.gov/species/false-killer-whale#conservation-management>.

The recovery planning components for the MHI IFKW DPS is divided into three separate documents. The first document, the Recovery Status Review (NMFS 2020a), provides all the detailed information on the MHI IFKWs' biology, ecology, status and threats, and conservation efforts to date, which have typically been included in the background section of a species' recovery plan. This separate, peer-reviewed document is designed to inform all post-listing activities, including recovery planning, and is a comprehensive update to the original 2010 status review (Oleson *et al.* 2010). The Recovery Status Review is a living document that will be updated regularly. The second document, the Draft Recovery Plan (NMFS 2020b), focuses on the statutory requirements of the ESA: (1) a description of site-specific management actions necessary to conserve the species; (2) objective, measurable criteria that, when met, will allow the species to be removed from the endangered and threatened species list; and (3) estimates of the time and funding required to achieve the plan's goals. Recovery actions in the Draft Recovery Plan are described at a higher-level and are more strategic. The third document, the Draft Recovery Implementation Strategy (NMFS 2020c), is a flexible, operational document separate from the Draft Recovery Plan that provides specific, prioritized activities necessary to fully implement recovery actions in the Draft Recovery Plan, while affording us the ability to modify these activities in real time to reflect changes in the

information available as well as progress towards recovery. All recovery planning documents, including the Recovery Status Review, the Draft Recovery Plan, and the Draft Recovery Implementation Strategy, are available on the NMFS false killer whale species profile web site at <https://www.fisheries.noaa.gov/species/false-killer-whale#conservation-management>.

We have determined that this Draft Recovery Plan for the MHI IFKW DPS meets the statutory requirements for a recovery plan and are proposing to adopt it as the ESA recovery plan for this endangered DPS. Section 4(f) of the ESA, as amended in 1988, requires that public notice and an opportunity to comment be provided prior to final approval of a recovery plan. This notice solicits comments on this Draft Recovery Plan and Draft Recovery Implementation Strategy.

Contents of the Draft Recovery Plan

The Draft Recovery Plan presents NMFS' proposed recovery goal, objectives, and criteria for making a downlisting (to threatened) and delisting decision. The proposed demographic and threats-based recovery objectives and criteria are based on the five listing factors found in the ESA section 4(a)(1). Before NMFS can remove the MHI IFKW DPS from protection under the ESA, the factors that led to the ESA listing need to have been reduced or eliminated to the point where federal protection under the ESA is no longer needed, and there is reasonable certainty that the relevant regulatory mechanisms are adequate to protect MHI IFKWs. The proposed demographic and threats-based recovery objectives and criteria for the MHI IFKW address threats from small population size, incidental take, inadequate regulatory mechanisms, competition with fisheries for prey, environmental contaminants and biotoxins, anthropogenic noise,

effects from climate change, and secondary threats and synergies. The Draft Recovery Plan also describes specific information on the following: Current status of MHI IFKWs; pressures (limiting factors) and threats that have contributed to the MHI IFKWs' decline; recovery strategies to address the threats based on the best available science; and site-specific actions with timelines. The Draft Recovery Plan also summarizes time and costs required to implement recovery actions.

The Draft Recovery Implementation Strategy provides specific, prioritized activities necessary to fully implement recovery actions in the Draft Recovery Plan. This stepped-down approach will afford us the ability to modify these activities in real time to reflect changes in the information available as well as progress towards recovery.

How NMFS and Others Expect to Use the Plan

In addition to continuing to carry out actions already underway, such as photo identification efforts and satellite tag deployment and analysis, we have begun implementation of outreach actions as described in the plan, such as developing strategic outreach messaging and tools for fishermen and boaters to report sightings of false killer whales, and anonymously reporting interactions with false killer whales. After public comment and the adoption of the Final Recovery Plan and Final Recovery Implementation Strategy, we will implement the actions and activities for which we have authority and funding; encourage other federal, state, and local agencies to implement recovery actions and activities for which they have responsibility, authority, and funding; and work cooperatively with the public and local stakeholders on implementation of other actions and activities. We expect the Recovery Plan to guide us and other federal agencies in evaluating federal actions under ESA section 7, as well as in implementing

other provisions of the ESA, such as considering permits under section 10, and other statutes.

When we are considering a species for delisting, the agency will examine whether the ESA section 4(a)(1) listing factors have been addressed. To assist in this examination, we will use the delisting criteria described in the Draft Recovery Plan, which include both demographic criteria and threats-based criteria addressing each of the ESA section 4(a)(1) listing factors, as well as any other relevant data and policy considerations.

Public Comments Solicited

We are soliciting written comments on the Draft Recovery Plan and Draft Recovery Implementation Strategy. All substantive comments received by the date specified above will be considered and incorporated, as appropriate, prior to our decision whether to approve this Recovery Plan and Recovery Implementation Strategy. While we invite comments on all aspects of the Draft Recovery Plan and Draft Recovery Implementation Strategy, we are particularly interested in comments on the proposed objectives, criteria, and actions, as well as comments on the estimated time and cost of recovery actions and activities.

In addition, the ESA requires that we conduct a review of listed species at least once every five years. On the basis of such review under section (4)(c)(2)(B), we determine whether any species should be removed from the list (*i.e.*, delisted) or reclassified from endangered to threatened or from threatened to endangered (16 U.S.C. 1533(c)(2)(B)). Any change in federal classification would require a separate rulemaking process. The regulations in 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review. This notice

announces our active review of the MHI IFKW listed as an endangered DPS (77 FR 70915; November 28, 2012). Comments and information submitted will be considered in the 5-year review, as applicable.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: October 13, 2020.

Angela Somma,

Chief, Endangered Species Conservation Division,

Office of Protected Resources,

National Marine Fisheries Service.

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